

SENATE BILL No. 239

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-2-1.5; IC 33-2.1-9; IC 33-13-17-1; IC 33-14-11-3; IC 34-13.

Synopsis: Attorney general's representation. Provides that certain laws requiring the attorney general to defend state officials and employees do not apply to civil actions brought against state officials and employees by the state.

Effective: July 1, 2004.

Broden

January 8, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 239

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-2-1.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1.5. (a) **This section**
3 **does not apply to an action brought by the state.**

4 (b) Whenever any state governmental official or employee, whether
5 elected or appointed, is made a party to a suit and the attorney general
6 determines that ~~said the~~ suit has arisen out of an act which ~~such the~~
7 official or employee in good faith believed to be within the scope of ~~his~~
8 **the official's or employee's** duties as prescribed by statute or duly
9 adopted regulation, the attorney general shall defend ~~such the~~ person
10 throughout ~~such the~~ action.

11 (b) (c) Whenever a teacher (as defined in IC 20-6.1-1-8) is made a
12 party to a civil suit and the attorney general determines that the suit has
13 arisen out of an act that the teacher in good faith believed was within
14 the scope of the teacher's duties in enforcing discipline policies
15 developed under IC 20-8.1-5-2(e), the attorney general shall defend the
16 teacher throughout the action.

17 (c) (d) A determination by the attorney general under subsection (a)



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1 ~~or~~ (b) or (c) shall not be admitted as evidence in the trial of ~~any such~~
2 ~~the~~ civil action for damages.

3 ~~(d)~~ (e) Nothing in this chapter shall be construed to deprive ~~any~~
4 ~~such~~ a person of ~~his~~ **the** right to select counsel of ~~his~~ **the person's** own
5 choice at ~~his~~ **the person's** own expense.

6 SECTION 2. IC 33-2.1-9-1, AS AMENDED BY P.L.72-2002,
7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2004]: Sec. 1. (a) As used in this chapter, "judge" has the
9 meaning set forth in IC 33-13-17-3.

10 (b) As used in this chapter, "prosecuting attorney" includes a senior
11 prosecuting attorney appointed under IC 33-14-1.

12 (c) **Except as provided in section 2 of this chapter**, if a judge or
13 prosecuting attorney is sued for civil damages or equitable relief and
14 the suit would be construed, under notice pleading, as arising out of an
15 act performed within the scope of the duties of the judge or prosecuting
16 attorney, the attorney general shall:

- 17 (1) defend the judge or prosecuting attorney in the suit; or
- 18 (2) authorize the executive director of the division of state court
19 administration to hire private counsel to provide the defense.

20 SECTION 3. IC 33-2.1-9-2 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Nothing in this
22 chapter permits the appointment of counsel for the defense of a judge
23 or prosecuting attorney in:

- 24 (1) criminal **proceedings; or**
- 25 (2) disciplinary proceedings; **or**
- 26 (3) **an action brought by the state.**

27 SECTION 4. IC 33-13-17-1 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. This chapter does not
29 apply to a threatened, pending, or completed action or a proceeding
30 that:

- 31 (1) **is brought by the state against;**
- 32 (2) results in the criminal conviction of; or
- 33 ~~(2)~~ (3) is a disciplinary action or proceeding against;
34 a judge.

35 SECTION 5. IC 33-14-11-3 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. This chapter does not
37 apply to a threatened, pending, or completed action or a proceeding
38 that:

- 39 (1) **is brought by the state against;**
- 40 (2) results in the criminal conviction of; or
- 41 ~~(2)~~ (3) is a disciplinary action or proceeding against;
42 a prosecuting attorney.

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1 SECTION 6. IC 34-13-2-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a) This section**
 3 **does not apply to an action brought by the state against a present**
 4 **or former state employee.**

5 **(b)** If requested to do so, the attorney general shall defend a present
 6 or former state employee against any claim or suit brought against the
 7 state employee with regard to a contract entered into for the employee's
 8 governmental entity. The attorney general may employ other counsel
 9 to aid in defending or settling the claim or suit.

10 SECTION 7. IC 34-13-3-5, AS AMENDED BY P.L.161-2003,
 11 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2004]: Sec. 5. (a) Civil actions relating to acts taken by a
 13 board, a committee, a commission, an authority, or another
 14 instrumentality of a governmental entity may be brought only against
 15 the board, the committee, the commission, the authority, or the other
 16 instrumentality of a governmental entity. A member of a board, a
 17 committee, a commission, an authority, or another instrumentality of
 18 a governmental entity may not be named as a party in a civil suit that
 19 concerns the acts taken by a board, a committee, a commission, an
 20 authority, or another instrumentality of a governmental entity where the
 21 member was acting within the scope of the member's employment. For
 22 the purposes of this subsection, a member of a board, a committee, a
 23 commission, an authority, or another instrumentality of a governmental
 24 entity is acting within the scope of the member's employment when the
 25 member acts as a member of the board, committee, commission,
 26 authority, or other instrumentality.

27 (b) A judgment rendered with respect to or a settlement made by a
 28 governmental entity bars an action by the claimant against an
 29 employee, including a member of a board, a committee, a commission,
 30 an authority, or another instrumentality of a governmental entity, whose
 31 conduct gave rise to the claim resulting in that judgment or settlement.
 32 A lawsuit alleging that an employee acted within the scope of the
 33 employee's employment bars an action by the claimant against the
 34 employee personally. However, if the governmental entity answers that
 35 the employee acted outside the scope of the employee's employment,
 36 the plaintiff may amend the complaint and sue the employee
 37 personally. An amendment to the complaint by the plaintiff under this
 38 subsection must be filed not later than one hundred eighty (180) days
 39 from the date the answer was filed and may be filed notwithstanding
 40 the fact that the statute of limitations has run.

41 (c) A lawsuit filed against an employee personally must allege that
 42 an act or omission of the employee that causes a loss is:

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- (1) criminal;
- (2) clearly outside the scope of the employee's employment;
- (3) malicious;
- (4) willful and wanton; or
- (5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

(d) This subsection applies when the governmental entity defends or has received proper legal notice and has the opportunity to defend an employee for losses resulting from the employee's acts or omissions. Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment of a claim or suit against an employee when the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(e) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, **except for suits brought against the employee by the state**, regardless of whether the employee can or cannot be held personally liable for the loss.

(f) This chapter shall not be construed as:

- (1) a waiver of the eleventh amendment to the Constitution of the United States;
- (2) consent by the state of Indiana or its employees to be sued in any federal court; or
- (3) consent to be sued in any state court beyond the boundaries of Indiana.

SECTION 8. IC 34-13-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a) This section does not apply to an action brought by the state against a present or former state employee.**

(b) If requested to do so, the attorney general shall defend a present or former state employee against a claim or suit under section 1 of this chapter. The attorney general may employ other counsel to aid in defending or settling the claim or suit.

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